

**Calendar No. 405**

103D CONGRESS  
2D SESSION

**S. 1944**

**A BILL**

To increase and extend criminal and other penalties for health care fraud and abuse, and for other purposes.

APRIL 11, 1994

Read the second time and placed on the calendar

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## IN THE SENATE OF THE UNITED STATES

MARCH 17 (legislative day, FEBRUARY 22), 1994

Mr. KOHL introduced the following bill; which was read the first time

APRIL 11, 1994

Read the second time and placed on the calendar

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## A BILL

To increase and extend criminal and other penalties for health care fraud and abuse, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

### 3   **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Health Care Fraud  
5   and Abuse Act of 1994”.

1 **SEC. 2. EXPANSION OF CIVIL AND CRIMINAL MONETARY**  
2 **SANCTIONS.**

3 (a) CIVIL SANCTIONS.—Section 1128A of the Social  
4 Security Act (42 U.S.C. 1320a–7a) is amended—

5 (1) in subsections (a) and (b), by striking  
6 “\$2,000” each place it appears and inserting  
7 “\$5,000”,

8 (2) in the second sentence of subsection (a), by  
9 striking “not more than twice” and inserting “not  
10 more than three times”, and

11 (3) by adding at the end the following new sub-  
12 section:

13 “(m)(1) The maximum civil monetary penalty  
14 amounts specified in subsections (a) and (b) shall be ad-  
15 justed for inflation as provided in this subsection.

16 “(2) Not later than December 1, 1999, and Decem-  
17 ber 1 of each fifth calendar year thereafter, the Secretary  
18 shall prescribe and publish in the Federal Register a  
19 schedule of maximum authorized penalties that shall apply  
20 for violations that occur after January 1 of the year imme-  
21 diately following such publication.

22 “(3) The schedule of maximum authorized penalties  
23 shall be prescribed by increasing each of the amounts  
24 specified in subsections (a) and (b) by the cost-of-living  
25 adjustment for the preceding five years. Any increase de-

1 terminated under the preceding sentence shall be rounded  
2 to the nearest multiple of \$1,000.

3 “(4) For purposes of this subsection:

4 “(A) The term ‘cost-of-living adjustment  
5 for the preceding five years’ means the percent-  
6 age by which—

7 “(i) the Consumer Price Index for the  
8 month of June of the calendar year preced-  
9 ing the adjustment, exceeds

10 “(ii) the Consumer Price Index for  
11 the month of June preceding the date on  
12 which the maximum authorized penalty  
13 was last adjusted under this subsection.

14 “(B) The term ‘Consumer Price Index’  
15 means the Consumer Price Index for all urban  
16 consumers published by the Department of  
17 Labor.”.

18 (b) TREBLE DAMAGES FOR CRIMINAL SANCTIONS.—  
19 Section 1128B of the Social Security Act (42 U.S.C.  
20 1320a–7b) is amended by adding at the end the following  
21 new subsection:

22 “(f) In addition to the fines that may be imposed  
23 under subsection (a), (b), or (c), any individual found to  
24 have violated the provisions of any of such subsections  
25 may be subject to treble damages.”.

1 (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall take effect on January 1, 1995.

3 **SEC. 3. APPLICATION OF FEDERAL HEALTH ANTI-FRAUD**  
4 **AND ABUSE SANCTIONS TO ALL FRAUD AND**  
5 **ABUSE AGAINST ANY HEALTH BENEFIT PLAN.**

6 (a) CIVIL MONETARY PENALTIES.—Section 1128A  
7 of the Social Security Act (42 U.S.C. 1320a–7a) is amend-  
8 ed as follows:

9 (1) In subsection (a)(1), in the matter before  
10 subparagraph (A), by inserting “or of any health  
11 benefit plan,” after “subsection (i)(1)),”.

12 (2) In subsection (b)(1)(A), by inserting “or  
13 under a health benefit plan” after “title XIX”.

14 (3) In subsection (f)—

15 (A) by redesignating paragraph (3) as  
16 paragraph (4); and

17 (B) by inserting after paragraph (2) the  
18 following new paragraph:

19 “(3) With respect to amounts recovered arising  
20 out of a claim under a health benefit plan, the por-  
21 tion of such amounts as is determined to have been  
22 paid by the plan shall be repaid to the plan.”.

23 (4) In subsection (i)—

1 (A) in paragraph (2), by inserting “or  
2 under a health benefit plan” before the period  
3 at the end, and

4 (B) in paragraph (5), by inserting “or  
5 under a health benefit plan” after “or XX”.

6 (b) CRIMES.—Section 1128B of the Social Security  
7 Act (42 U.S.C. 1320a–7b) is amended as follows:

8 (1) In the heading, by adding at the end the  
9 following: “OR HEALTH BENEFIT PLANS”.

10 (2) In subsection (a)(1)—

11 (A) by striking “title XVIII or” and insert-  
12 ing “title XVIII,”, and

13 (B) by adding at the end the following: “or  
14 a health benefit plan (as defined in section  
15 1128(i)),”.

16 (3) In subsection (a)(5), by striking “title  
17 XVIII or a State health care program” and inserting  
18 “title XVIII, a State health care program, or a  
19 health benefit plan”.

20 (4) In the second sentence of subsection (a)—

21 (A) by inserting after “title XIX” the fol-  
22 lowing: “or a health benefit plan”, and

23 (B) by inserting after “the State” the fol-  
24 lowing: “or the plan”.

1           (5) In subsection (b)(1), by striking “title  
2       XVIII or a State health care program” each place  
3       it appears and inserting “title XVIII, a State health  
4       care program, or a health benefit plan”.

5           (6) In subsection (b)(2), by striking “title  
6       XVIII or a State health care program” each place  
7       it appears and inserting “title XVIII, a State health  
8       care program, or a health benefit plan”.

9           (7) In subsection (b)(3), by striking “title  
10      XVIII or a State health care program” each place  
11      it appears in subparagraphs (A) and (C) and insert-  
12      ing “title XVIII, a State health care program, or a  
13      health benefit plan”.

14          (8) In subsection (d)(2)—

15               (A) by striking “title XIX,” and inserting  
16               “title XIX or under a health benefit plan,” and

17               (B) by striking “State plan,” and inserting  
18               “State plan or the health benefit plan,”.

19          (c) HEALTH BENEFIT PLAN DEFINED.—Section  
20   1128 of the Social Security Act (42 U.S.C. 1320a–7) is  
21   amended by redesignating subsection (i) as subsection (j)  
22   and by inserting after subsection (h) the following new  
23   subsection:

24          “(i) HEALTH BENEFIT PLAN DEFINED.—For pur-  
25   poses of sections 1128A and 1128B, the term ‘health ben-

1 efit plan’ means a health benefit program other than the  
 2 medicare program, the medicaid program, or a State  
 3 health care program.”.

4 (d) CONFORMING AMENDMENT.—Section  
 5 1128(b)(8)(B)(ii) of the Social Security Act (42 U.S.C.  
 6 1320a–7(b)(8)(B)(ii)) is amended by striking “1128A”  
 7 and inserting “1128A (other than a penalty arising from  
 8 a health benefit plan, as defined in subsection (i))”.

9 (e) EFFECTIVE DATE.—The amendments made by  
 10 this section shall take effect January 1, 1995.

11 **SEC. 4. CIVIL MONETARY PENALTIES INCLUDED IN ANTI-**  
 12 **KICKBACK SANCTIONS.**

13 (a) IN GENERAL.—Section 1128A(a) of the Social  
 14 Security Act (42 U.S.C. 1320a–7a(a)), as amended by sec-  
 15 tion 2(a), is amended—

16 (1) by striking “or” at the end of paragraph  
 17 (1)(D);

18 (2) by striking “, or” at the end of paragraph  
 19 (2) and inserting a semicolon;

20 (3) by striking the semicolon at the end of  
 21 paragraph (3) and inserting “; or”;

22 (4) by inserting after paragraph (3) the follow-  
 23 ing new paragraph:

24 “(4) carries out any activity in violation of  
 25 paragraph (1) or (2) of section 1128B(b);”;



1           (5) by striking “than \$5,000” and all that fol-  
2       lows through the period and inserting “than, in  
3       cases under paragraph (1) or (2), \$5,000 for each  
4       item or service, in cases under paragraph (3),  
5       \$15,000 for each individual with respect to whom  
6       false or misleading information is given, and in cases  
7       under paragraph (4), \$10,000 for each violation.”;  
8       and

9           (6) by striking “than three times” and all that  
10      follows through the period and inserting “than, in  
11      cases under paragraph (1) or (2), three times the  
12      amount claimed for each such item or service in lieu  
13      of damages sustained by the United States or a  
14      State agency because of such claim, and in cases  
15      under paragraph (4), twice the total amount of the  
16      remuneration offered, paid, solicited, or received in  
17      violation of paragraph (1) or (2) of section  
18      1128B(b).”.

19      (b) EFFECTIVE DATE.—The amendments made by  
20      subsection (a) shall take effect January 1, 1995.

21      **SEC. 5. VOLUNTARY DISCLOSURE PROGRAM.**

22      In consultation with the Attorney General of the  
23      United States, the Secretary of Health and Human Serv-  
24      ices shall publish proposed regulations no later than 9  
25      months after the date of the enactment of this Act, and

1 final regulations no later than 18 months after such date  
2 of enactment, establishing a program of voluntary disclo-  
3 sure that would facilitate enforcement of sections 1128A  
4 and 1128B of the Social Security Act (42 U.S.C. 1320a-  
5 7a and 1320a-7b) and other relevant provisions of Fed-  
6 eral law relating to health care fraud and abuse. Such pro-  
7 gram should promote and provide incentives for disclo-  
8 sures of potential violations of such sections and provi-  
9 sions by providing that, under certain circumstances, the  
10 voluntary disclosure of wrongdoing would result in the im-  
11 position of penalties and punishments less substantial  
12 than those that would be assessed for the same wrong-  
13 doing if voluntary disclosure did not occur.

14 **SEC. 6. EXPANSION OF HEALTH CARE FRAUD INVESTIGA-**  
15 **TIVE RESOURCES.**

16 There are authorized to be appropriated for the hir-  
17 ing of additional personnel in the Department of Health  
18 and Human Services Office of the Inspector General  
19 \$25,000,000 for each of fiscal years 1994, 1995, 1996,  
20 and 1997 to sustain and expand the investigation of health  
21 care fraud.